IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 10500 of 2000

For Approval and Signature:

HONOURABLE MR.JUSTICE SHARAD D.DAVE

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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STATE OF GUJARAT - Petitioner(s)

Versus

BIJAL MANGABHAI MAKWANA - Respondent(s)

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Appearance :
Ms.Rita Chandarana, AGP for Petitioner(s) : 1,
MR KS ACHARYA for Respondent(s) : 1,
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CORAM : HONOURABLE MR.JUSTICE SHARAD D.DAVE

Date : 13/01/2006

CAV JUDGMENT

1.By filing this petition, the petitioner has challenged the judgment and award dated 7.12.1999 passed by the Presiding Officer, Labour Court, Rajkot in Reference

(LCR) No.174 of 1985, whereby the Labour Court has directed the petitioner to reinstate the respondent – workman on his original post and also directed the petitioner to pay 20% back wages for the intervening period.

2.Heard the learned advocates for the parties.

3.This Court (Coram : K.S.Jhaveri,J) has passed the following order on 18.7.2005 :-

"This Court on 31st August, 2001 had passed the following order :

"Since the matter is admitted, ad-interim relief granted is confirmed subject to the compliance of the provisions of Section 17-B of the Industrial Disputes Act, 1947. The petitioner is directed to comply with the provisions of Section 17-B of the Act from the date of the Award of the Labour Court. The employee may file affidavit as per the said provisions of Section 17-B of the Act. On filing the said affidavit, the Management will comply with the provisions of Section 17-B. The matter is fixed for final hearing in the first week of October, 2001."

2.To enable Mr.Pandya, learned A.G.P., to make a statement whether the aforesaid order of this Court is complied with or not. S.O., to 1st August, 2005."

4.It is submitted by the learned advocate appearing for the respondent – workman that the petitioner has complied with the provisions of Section 17-B and that the respondent - workman has been paid the last drawn wages, copy of the receipt of the payment is produced on record.

5.It is required to be noted that the Labour Court has come to the conclusion that there is a breach of the provisions of Section 25-F of the Industrial Disputes Act and it can be presumed that the respondent – workman has worked for more than 240 days in a preceding year since the petitioner employer has failed to produce on record necessary documents before the Labour Court showing that the respondent workman has not worked for more than 240 days in a preceding year.

6.Considering the fact that the termination of service of the respondent – workman was not in accordance with the provisions of Industrial Disputes Act, the order of termination has to be set aside but the fact that the services of the respondent – workman were terminated as back as on 31.08.1983, I am not inclined to direct reinstatement of the petitioner, but considering the facts and circumstances of the case, the petitioner is directed to pay Rs.30,000/- (Rupees thirty thousand

only) to the respondent – workman in lieu of reinstatement and 20% back wages as has been awarded by the Labour Court. It is clarified that this amount is being paid by way of full and final settlement of all the claims of the respondent - workman. The said amount shall be paid to the respondent by the petitioner within two months from today.

7. Under the circumstances, the impugned judgment and award dated 7.12.1999 is modified to the extent indicated hereinabove. The petition is partly allowed. Rule is made absolute to the aforesaid extent.

(SHARAD D DAVE, J)

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